

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 5269 OF 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMABHAI POPATBHAI BHANGI

VERSUS

STATE OF GUJARAT & ORS

Appearance:

MR CL SONI for the petitioner

MR SP HASOORKAR for the respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 26/07/99

C A V JUDGMENT

#. The petitioners, confirmed (Retd.) employees of the respondent No.2-Municipality praying for issuance of the directions to the respondent to grant them pensionary

benefits.

#. Briefly stated the facts of the case are that the petitioners had put in more than 30 years of services in the office of the respondent No.2 as sweeper (safai kamdar). The petitioners were about to reach the age of superannuation, but before reaching of the said age as they were not physically fit to carry on work of safai kamdar and had in fact became weak to do such work they have submitted their resignation from services. They made representations to all the concerned officers from time to time for giving them the pension benefits. They filed special civil application No.4362/92 before this court, which came to be decided on 29/12/93 in terms directing the respondents to consider the case of the petitioners sympathetically with regard to their claim of pensionary benefits. Under the order dtd. 3/5/94 the respondent No.1 has declined to grant the prayer of the petitioners for grant of pension. This order has been made on the ground that the petitioners are not fulfilling the conditions of Government Resolution dated 15/12/88. The petitioners filed second special civil application before this court being Special Civil Application No.8363/95, which came to be decided on 22/1/96. This court has again ordered the respondent No.1 that it in its order 3/5/94 has not given out which of the condition of the resolution dated 15/12/88 the petitioners are not fulfilling. The direction has been given to the respondent No.1 to reconsider the matter in the light of the observations made in the judgment aforesaid. Fresh decision was taken by the respondent No.1 and it has been communicated to the chief officer of the Jasdan Nagar Panchayat vide letter dated 24/2/97. The claim of the petitioners has been rejected on the ground that as per sub para (2) of para 3 of the resolution dated 15/12/88 where, in service condition of such employees age limit of retirement is not fixed and such employees became disabled and resigned due to age factor are only eligible for the benefit of the pension. It is mentioned that the petitioners had not become disabled and resigned due to the work of safai and not became disabled and resigned due to age factor. Hence this special civil application before this court.

#. The learned counsel for the petitioner contended that the respondents are acting highly arbitrarily in the matter of grant of pension benefits to the petitioners. It has next been contended that the whole approach of the respondent No.1 in this matter is contrary to the resolution dated 15/12/88. Lastly it is contended that the petitioners are poor persons and they have rendered

more than 30 years service and because of that they became incapacitated due to their age factor they resigned from the services and this technical approach should not have been taken and the substance of the matter has to be considered and they should have been extended the benefit of the resolution dated 15/12/88.

#. On the other hand, the learned counsel for the respondents submits that the petitioners are not entitled for the pension and rightly the decision has been taken in their matter by the respondent No.1 to which no exception can be taken.

#. It is really shocking that in such matter the respondents have not taken care to file reply to the special civil application. It is unfortunate that these poor persons, low paid employees of the category of safai kamdar were forced by the State of Gujarat, its functionaries and officers to incur heavy expenses of litigation in the matter where rather the just claim of the petitioner should have been accepted, they have been compelled to come before this court.

#. The resolution dated 15/12/88 provides that the benefits of the same may be available to the employees of converted Gram/Nagar Panchayats where in the service condition of the employee the age limit of retirement is not fixed and such employees become disabled and resigned due to age factor. It is not the case of the respondents that the age of retirement was fixed in cases of the petitioners. Respondents have not disputed that the petitioners resigned from the services when they were about to reach the normal age of superannuation. Nor is in dispute that they were forced to resign from the services as they were not in a position to carry out the work of safai kamdar and had become unable to do such work. Pension is not a charity to the employees. It is a right earned after he has rendered the services to the employer for a particular period i.e. qualifying service. In Vasant Gan Garamsa Chandan Vs. State of Maharashtra, 1996(10) SCC 148 their Lordships of Supreme Court held that pension is a right and not bounty. The services of the petitioners are not pensionable is not the case of the respondents. Only defence put orally is that the cases of the petitioners do not fall under resolution dated 15/12/1988.

#. Another contention raised by the learned counsel for the petitioner is that the resolution dated 15/12/88 results in hostile discrimination without there being any rationality behind it amongst a class of the employees,

who have resigned from services on becoming disabled because of the age and the class of the employees, who have also resigned from the services because of the age factor, only on the ground that in former case age of superannuation is not fixed. Sub-clause (2) of clause 3 of the resolution dated 15/11/1988 makes reference to the case where the age limit of the retirement is not fixed. The case of the petitioner on the facts has not been controverted. So it has to be taken to be admitted by the respondents that they have resigned from the services because of their advanced age and as a result thereof they were not in a position to carry out the work of safai kamdar i.e. had become unable to do that work. I fail to see any justification what to say to any nexus with the objects sought to be achieved by making distinction in between the cases of the employees where the age of superannuation is fixed with those employees in their cases the age of superannuation is not fixed. An employee, who resigns from the services because of his advanced age is not in a position to discharge his duties assigned to him or becoming unable to do his work, his case for grant of pension has to be considered sympathetically and more so where on the date on which he resigned from services he has to his credit qualifying services as laid down for pension. In the matter of grant of the pension and more so where it pertains to low paid employees of the category of sweepers (safai kamdars) this approach, attitude and decision by none other than the welfare state is difficult to appreciate what to say to accept. After rendering the services of more than 30 years the petitioners will go home without any penny, though without there being any fault on their part. What is their fault? They are the persons who believe in taking the salary after doing work or discharging of their duties. The petitioners have resigned from the services when they felt it difficult to discharge their duties honestly because of their age factor or because of their inability to work. They have acted very fairly and reasonably and instead of rewarding and appreciating the same the officers of the welfare state has acted contrary to the basic principles of fair play and equity in the matter of extending the benefits of the pension, gratuity and other retirement benefits to them. The distinction which is sought to be made in between the class of the persons, as rightly been contended by the learned counsel for the petitioner, is wholly arbitrary and perverse. The approach should have been to see that this class of employees get the benefits of pension. Otherwise also on attaining the age of superannuation there would not have been any difficulty for the petitioners to get the pension but merely because

they resigned probably under somebody's advise or they could not have got proper advice, though on that day they have rendered more than 30 years services they should have denied of the pension. The action of the respondents to deny benefits of pension to the petitioners is not justified, reasonable and in accordance with the provisions of Articles 14 & 21 of the Constitution of India. The respondents have failed to give out any other reasonable justification for their action not to give the benefits of the pension to the petitioners than what the respondent No.1 said in its communication dated 24/2/97. This distinction which is sought to be drawn for the purpose of denying of the retirement benefits to the petitioners cannot be accepted. The petitioners have resigned due to their inability to discharge their duties after doing more than 30 years service their claim for the pension deserves acceptance. The sub para (2) of para 3 of the resolution dated 15/12/88 has to be read, considered and taken in the context of Articles 14 and 21 of the Constitution of India and with the object that the employees have right to go on voluntary retirement also after completion of a requisite period of service and/or attaining particular age. This is a clear case where the petitioners have been deprived of the pension benefits altogether on the arbitrary ground.

#. On the one hand the Central and the State Governments talks very high for providing amenities, facilities and measures for upliftment of Scheduled Castes / Scheduled Tribes but, in reality, which is clearly borne out from this case, are acting contrary to it. All the petitioners in this special civil application are Scheduled Caste employees (safai kamdar). Though they have put more than 30 years service to the respondent No.2, have to go without any pension and other retirement benefits. The real need of money is there for all the peoples and in particularly the employees, who retired from the services so that they may not face any problem to have the bear necessity of life. The pension scheme is there for the employees in the State Government or in the Nagarpalika etc. so that after the retirement, employees may get regular financial assistance to enable them to meet their bear necessities of life. The petitioners are not only Scheduled Caste employees and belonging to low strata of society, were also low paid employees, they have to go and remain dependent on somebody else in their old age. To protect them from having financial hardships, shortcomings and difficulties the pension schemes are being introduced. The respondents, a welfare state and its officers have taken

a very very arbitrary approach in the matter and denied the pension benefits to the petitioners only on the basis of what they contends that they are not entitled as per the resolution dated 15/12/1988.

#. Pension is not a bounty and its purpose and object is in fact a socio-economic object and even if what the reading of the resolution, aforesaid of the officers of welfare state is taken to be correct certainly it makes hostile discrimination amongst a class of the employees, as it is being based wholly on irrational and arbitrary basis. Right to livelihood is a fundamental right as held in many cases by the Hon'ble Supreme Court and which includes the survival of a retired employee with suitable means of livelihood. The approach of the respondents, a welfare state, its functionaries and officers is contrary to the basic conception and underline object of provisions of Article 21 of the Constitution of India.

##. There are many socio-economic schemes by the Central and State Governments to provide the financial assistance and aid to the senior citizens of the country, which is commonly known as old age pension. I have been given out that this old age pension is available even to those senior citizens of the State, who were not in the services either of State Government and/or Central Government or municipalities or corporations etc. The case of the petitioners stand on much higher pedestal. Though they may not be fallen under the category, at this point of time of the senior citizens but they may fall in that category within a few years. It is stated at the cost of repetition that Jasdan Nagar Palika, Dist. Rajkot for 30 years taken their services. Services of the employees Jasdan Nagar Palika are pensionable. Otherwise also in case they were not resigned from services, they would have become entitled for the pension and other retirementary benefits. It is not gain say that if the petitioners would have been dishonest persons i.e. dishonesty with reference to the discharging of their duties, which are being assigned to them they could have managed to continue in the service till they attain the age of superannuation though they have totally rendered themselves incapable of discharging their duties because of their age. The honesty is not rewarded. The honesty, sincerity, fairness, hard working and consciousness about the duties are not being rewarded in the country and that may be the one of the reasons of the growing graph of dishonesty amongst the employees/officers in many spheres.

##. In the result this special civil application

succeeds and the same is allowed and the order dated 24/2/97 (Annexure-B) at page No.28 of this special civil application is quashed and set aside and it is hereby declared that the petitioners are entitled for the pension. The respondents are directed to start and complete the process of sanctioning the pension to the petitioners, to calculate the amount of the arrears of pension payable to them the amount of gratuity and all other retirement benefits, which are payable to them in accordance with the law within 3 months from the date of the receipt of the writ of this order. The actual payment of the arrears of pension and amount of other retirement benefits have to be paid to the petitioner within a period of 1 month next.

#. The respondents are to report the compliance of this order to the court. Rule is made absolute in the aforesaid terms.

##. The petitioners are Scheduled Caste and they were working as safai kamdar. In the matter of grant of pension this is their third petition before this court. This is how the officers and functionaries of the welfare state have acted in the matter of this low paid Scheduled Caste employees. It is a fittest of fit case where the costs has to be awarded in favour of the petitioners. The State of Gujarat is directed to pay Rs.10,000/- as the costs of this petition to the petitioners in equal proportion. This amount of the costs is to be paid personally to the petitioners.

(S.K.Keshote, J.)

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